

MOTION TO ENLARGE THE ISSUE IN MB DOCKET No. 07-18, relating in relevant part to the acquisition of DIRECTV by LIBERTY MEDIA, to consider whether DIRECTV has, by falsely stating that tenants do not have the right under 47CFR1.4000 to acquire and operate individual antennas, improperly or unlawfully acquired or retained customers.

In determining whether the proposed transfer will result in any party having excessive or monopolistic control, or in a restraint of trade between persons who are not parties to the proposed transaction, it is essential to consider that DIRECTV provides false legal advice to tenants, thereby preventing the tenants from obtaining service from a competitor. To the extent that DIRECTV has acquired or retained customers unlawfully, the party acquiring a controlling interest in DIRECTV would also acquire those customers, who are unlawfully restrained from seeking service from a competitor.

Under 47CFR1.4000, tenants have the right to operate a satellite dish antenna, up to certain size limitations (except in Alaska), for the purpose of receiving television services that would otherwise be either unavailable or unreasonably more expensive, except where doing so would endanger safety or historic buildings or a waiver has been granted. In particular, the Federal Communications Commission has previously found that tenants in buildings with central antenna systems cannot be prohibited from using an individual antenna (instead of the central antenna system) if the cost to the tenant of using the central antenna system is greater than the cost to the tenant of using an individual antenna.

After I paid the operator of a central antenna system for DIRECTV service, I received a telephone call from DIRECTV demanding payment of an amount equal to the total amount that DIRECTV would have charged me for the same service if I had an individual antenna. Since DIRECTV would charge me the same amount regardless of whether I used an individual or central antenna, I did not want to continue to pay the central antenna operator (which had been dishonest and unsatisfactory in other ways) and stated that if I could not receive central antenna service without paying more than the lower amount promised by the central antenna operator, I would prefer to have my own individual antenna. DIRECTV then told me to speak to my landlord. I stated that I wanted to obtain an individual antenna, even if my landlord did not approve, as was my right under 47CFR1.4000. DIRECTV then stated that I could not do so because "you cannot accept the liability". While the question of who is liable for damage or injury caused by an individual antenna is an interesting one, the landlord had not obtained a waiver from the Federal Communications Commission to allow him to restrict the tenants for liability reasons. The language of 47CFR1.4000 is

clear that safety and preservation of historic buildings are the only two reasons for which otherwise prohibited restrictions may be imposed without a waiver, and that, unless one of those two reasons applies, a tenant may install and operate an individual antenna, until such time as a waiver is issued. Even if DIRECTV declined to provide me with individual antenna service, for whatever reason, I would still have had the right to seek to obtain individual antenna service from another company, such as DISH Network.

I do not know why DIRECTV stated otherwise. DIRECTV may have feared that I would seek to obtain individual antenna service from another company, such as DISH Network, and have stated that tenants cannot have individual antennas in an attempt to limit my choices to the services available through the central antenna system, all of which were DIRECTV services. Alternatively, DIRECTV may have been receiving kickbacks from operator of the central antenna system. However, one thing is clear: no private company can unilaterally alter the Code of Federal Regulations, for any reason.

I do not believe this experience to be particularly unusual or unique. In fact, I know of no cases of tenants who are sufficiently satisfied with central antenna DIRECTV service that they would not prefer to switch to individual antennas, if they were not prevented from doing so by DIRECTV's inaccurate legal advice, or by their landlords' violations of 47CFR1.4000.

By allowing the proposed transaction to proceed, the Federal Communications Commission will allow the purchaser to acquire, in addition to any customers who have voluntarily chosen to be DIRECTV customers instead of customers of one of its competitors, also those customers who desire to be customers of its competitors, but cannot do so because they have been falsely told that they cannot use an individual antenna to do so.

Therefore, the proposed transaction must not be approved until the Federal Communications Commission determines that all tenants who were falsely informed that they had no option other than central antenna service have been informed of their rights under 47CFR1.4000 to individual antenna service, provided that (1) the total cost to the customer of central antenna service exceeds the total cost to the customer of individual antenna service, (2) no waiver has been issued, (3) the antenna will not endanger safety or the preservation of any historic buildings, and (4) where applicable, the size limitations of 47CFR1.4000 are satisfied.